In the High Court of Uttaranchal, at Nainital.

F.A. F.O. No. 181/2001

(Old No. 177 of 1983)

1-Smt. Rama Devi W/o Ram Gopal
R/o House No. 3, Kulri,
Mussoorie, District Dehradun
(since deceased)

1/1- Ram Gopal Rastogi, S/o Ram Prakash
Rastogi R/o Summer House Annexie,
Kulri, Mussorrie,
District Dehradun ... Appellant.

Vs.

1- Alok Kumar S/o M.N. Mehrotra,
R/o Stella Cottage, Mussorie,
District Dehradun

2- J.N. Sharma, Advocate
Receiver, 33 Lyton Road,
District Dehradun .. Respondents.

Sri Pankaj Miglani, learned counsel for the appellant.
Sri K.N. Joshi, learned counsel for the respondents.

Hon'ble B.C. Kandpal, J.

This appeal from order, U/S 75 of the Provincial Insolvency Act, has been filed by Smt. Rama Devi (since deceased), against the auction-purchaser Alok Kumar, O.P.No.1 and Receiver of the property in question, J.N. Sharma, O.P. No.2, against the order dated 12.1.1983, passed by the District Judge, Dehradun in Insolvency Case No. 8 of 1971 (Misc. Case No. 332 of 1980).

2- The brief facts of the case are that Mansa Ram and Sons was a partnership firm which used to do business of banking at Mussoorie, Dehradun and

Saharanpur. The said firm owned vast movable and immovable properties and assets at said places. The premises in question is one of them. An Insolvency Case No. 8/1971 was instituted with regard to the said property, which constituted a latrine, bath and kitchen situate at the back side of Amar Hotel. The Allahabad High Court in the aforesaid case in F.A. F.O. No. 545 of 1976 permitted the Receiver to sell the property of the insolvent by private negotiations to private parties subject to the final approval of the Insolvency Judge. The Receiver in compliance of the order passed by the court, sold the premises, referred to above to one Alok Kumar for a consideration of Rs. 13,000/- and the same was approved by the then District Judge vide order dated 22-10-1980. After the sale consideration was deposited by Alok Kumar, the sale deed was executed by the Receiver in his favour on 15.12.1980.

3- Smt. Rama Devi(since deceased), the appellant moved an objection before the learned Insolvency Judge, Dehradun on 16-12-1980 praying therein that the operation of the order dated 22-10-80 passed by the then District Judge be stayed and the official Receiver be directed not to execute the sale of the property in question in favour of Alok Kumar.

4- Sri Alok Kumar, O.P. No. 1, auction purchaser of the property in question also filed his objection before the court, denying the allegation made by the objector/appellant Smt. Rama Devi.

5- The learned District Judge/Insolvency Judge after having considered the contentions advanced by the parties and perusing the material available on record, was pleased to reject the objection filed by Smt. Rama

Devi vide order dated 12-1-1983. The District Judge vide the same order directed the Receiver to conclude the transaction by registration, in case if the order dated 22-10-1980, passed by the Predecessor Insolvency Judge has been complied with.

6- Feeling aggrieved by the impugned order dated 12-1-1983, the objector/ appellant has preferred this appeal before the Allahabad High Court, which was subsequently transferred to this court on creation of new State.

7- Heard learned counsel for the parties and perused the record.

8- The learned counsel for the appellant has argued before me that the court below has committed an illegality by not deciding the objection of the objector/appellant on the point that there was a fraud, irregularity or collusion in the sale of the property in question between auction-purchaser and the Receiver. In support of his contention he has also cited the decision **P. Srinivasa Naicker Vs. Engammal and after her death her legal representative Narayanaswami and another,** reported in **AIR 1962, Supreme Court 1141.**

9- I have perused the cited judgment carefully and I am of the view that the facts and circumstances in the judgment cited before me are absolutely different from the instant case as in the instant case the sale consideration had already been considered sufficient by the then Insolvency Judge and there was no finding of the then Insolvency Judge that the price fetched by the auction of the property in question was so low as

to justify the court to hold that the property should not be sold at that price.

10- The record reveals that the sale deed has already been executed by the Receiver in favour of Alok Kumar on 15-12-1980 and the sale deed was thereafter to be presented before the Sub Registrar for registration. Smt. Rama Devi, who appears to have been living in another portion, adjoining to the premises in question, has objected to the sale of the premises in favour of Alok Kumar, on the ground that she being in possession over the same was likely to be put to a great hardship, in case if the sale in favour of Alok Kumar was confirmed. The record reveals that the objection of Smt. Rama Devi was rejected on 28-2-1981 *exparte,* as Ram Devi was not present before the court on the said date. The court while rejecting the objection of Smt. Rama Devi perused the order of the predecessor Judge as well as the report of the Receiver. The learned Judge also observed that the sale deed had already been executed and the sale consideration has also been approved, therefore, there was not force in that objection. Smt. Ram Devi subsequently requested vide paper No. 29-C that the order dated 28-2-1981 be set aside and the matter be heard and decided on merits.

11- The court below thereafter heard the learned counsel for the parties and perused the material available on the record and then came to the conclusion that the objection raised by Smt. Rama Devi was also to be rejected on merits.

12- I also do not find anything on the record which may suggest that the objector/appellant Smt. Rama Devi (since deceased) had been in possession of the

premises sold to Alok Kumar. The then Insolvency Judge has already held the sale consideration to be reasonable and subsequently the sale deed was also executed in favour of auction-purchaser Alok Kumar, after deposit of the sale consideration with the Receiver. The learned lower court has thus rightly observed that it would be improper to deprive the auction-purchaser from the premises in question by issuing the direction to put the same for re-auction. The learned lower court has thus rightly rejected the objection raised by the appellant Smt. Rama Devi (since deceased). I do not find any illegality or infirmity in the impugned order passed by the court below.

13- The appeal lacks merit and is liable to be dismissed.

14- Accordingly the appeal is dismissed. No order as to costs.

(B.C.Kandpal, J.)

Dated: September 12, 2006.
ISB